

In re
JAMES WALTON, JR.,

Debtor. _____/

JAMES WALTON, JR.,

Plaintiff,
vs.
DEPARTMENT OF VETERANS AFFAIRS,
GMAC MORTGAGE CORP.,

Defendants. _____/

By this adversary proceeding, James Walton, Jr., the above debtor ("Walton") seeks damages and other relief based on defendants' alleged violations of the automatic stay provided by Bankruptcy Code § 362(a).¹ After the filing of the complaint, Walton dismissed the U.S. Department of Veterans Affairs (the "VA"), and proceeded to trial against GMAC Mortgage Corp. ("GMAC"), the

¹Except as otherwise stated, all further section references herein are to the Bankruptcy Code, 11 U.S.C. § 101 *et. seq.*

1 sole remaining defendant. The court will award Walton compensatory
2 damages in the sum of \$12,500, but declines to assess punitive
3 damages against GMAC.

4 A. BACKGROUND

5 In 1993, Walton borrowed money from GMAC's predecessor to
6 acquire certain real property in Oakland, California (the
7 "Property"). The loan was insured by the VA, and the Property is
8 Walton's residence. GMAC acquired the loan in February 1998.

9 The present chapter 13 case is Walton's third involving the
10 Property. Walton filed a chapter 13 petition on May 6, 1998 to
11 forestall a foreclosure sale that GMAC had set for May 9, 1998; the
12 court dismissed the petition on June 12, 1998. Walton filed another
13 chapter 13 petition on July 7, 1998 to forestall a continued
14 foreclosure sale that GMAC had set for July 10, 1998; the court
15 dismissed the petition on September 14, 1998.

16 Walton filed the present chapter 13 case on October 13, 1998 to
17 forestall a continued foreclosure sale that GMAC had set for October
18 14, 1998. On February 8, 1999 this court entered an order
19 dismissing this chapter 13 case on motion of the chapter 13 trustee,
20 alleging Walton's failure to file certain tax returns. On February
21 17, Walton filed an ex parte application to vacate the dismissal,
22 alleging that he would file the required tax returns within two
23 weeks, and that he wished to save the Property from foreclosure. On
24 February 22, 1999, the court entered its order vacating the
25 dismissal. The order provided for the case to be dismissed without
26 further hearing if Walton failed to file the required returns within

1 the time provided therein. Walton complied, and the reinstated case
2 proceeded in due course to plan confirmation.

3 On July 20, 1999, some five months after the court vacated the
4 dismissal, GMAC foreclosed its deed of trust on the Property and
5 thereby acquired the Property. One week later on July 17, 1999,
6 GMAC deeded the Property to the VA pursuant to the terms of its loan
7 guaranty. The VA then sought to evict Walton from the Property,
8 serving him with a three-day notice to quit pursuant to California
9 eviction procedures, followed by an unlawful detainer action in the
10 Alameda County Superior Court.

11 On October 22, 1999, Walton filed this adversary proceeding
12 seeking to quiet his title to the Property, to enjoin the defendants
13 from evicting him from the Property, declaratory relief, and
14 damages. Thereafter, the VA sought an order annulling the automatic
15 stay to validate the actions taken after the date of Walton's third
16 chapter 13 petition. The effort was not successful, whereupon the
17 VA assigned the loan back to GMAC.

18 On May 1, 2000, during the pendency of this adversary
19 proceeding, GMAC rescinded the foreclosure sale. On August 18, 2000
20 Walton dismissed the VA as a party.

21 Because Walton has retained possession of the Property at all
22 times relevant hereto, and because GMAC has restored title to
23 Walton, this adversary proceeding is moot with the exception of
24 Walton's damage claims against GMAC.

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1 B. DISCUSSION

2 Section 362(h) provides that

3 An individual injured by any willful violation of a stay
4 provided by this section shall recover actual damages,
5 including costs and attorneys' fees, and, in appropriate
6 circumstances, may recover punitive damages.

7 A willful violation does not require a specific intent to violate
8 the automatic stay. Rather, the standard under § 362(h) is met if
9 there is knowledge of the stay and the defendant intended the
10 actions which constituted the violation. In re Bloom, 875 F.2d 224,
11 227 (9th Cir. 1989).

12 Walton contends that GMAC's violation of the automatic stay was
13 willful, and that he is entitled to compensatory damages for
14 emotional distress, lost wages, and attorneys' fees, plus punitive
15 damages.

16 GMAC admits that it violated the automatic stay, but denies
17 that it had knowledge of the pendency of Walton's chapter 13 case at
18 the time of the foreclosure. It also disputes that Walton suffered
19 the damages he claims, and denies that some of Walton's damage
20 claims are compensable under § 362(h).

21 1. Mental Distress

22 Walton claims damages for mental distress. Courts disagree as
23 to whether and when a debtor may recover damages for mental distress
24 under § 362(h). Compare Aiello v. Providian Fin. Corp., 239 F.3d
25 876 (7th Cir. 2001) and Fleet Mortgage Group, Inc. v. Kaneb, 196
26 F.3d 265 (1st Cir. 1999). Here, Walton introduced no evidence that
he suffered any physical symptoms of consequence, that he incurred

1 any medical costs, or that he was treated by a physician for any
2 mental distress. Several witnesses, including Walton's brother,
3 cousin, and neighbor, testified that Walton was upset after the
4 foreclosure sale. One testified that he appeared to be drinking
5 more coffee than normal.

6 Under these facts, the court finds that regardless of the
7 applicable legal standard for recovery of mental distress damages
8 under § 362(h), Walton did not suffer any such damages that are
9 compensable herein. See, e.g., In re Robinson, 228 B.R. 75 (E.D.
10 N.Y. 1998).

11 2. Lost Wages

12 Walton claims that he missed at least 25 days of work plus
13 opportunities for overtime because he needed to meet with his
14 attorney, Phyllis Voisenat ("Voisenat"), to discuss GMAC's (and the
15 VA's) violation of the automatic stay. He also testified that,
16 because his employer does not pay wages for partial days, he lost at
17 least a full day's pay on each occasion that he met with Voisenat.

18 GMAC effectively impeached Walton's testimony in this regard.
19 Voisenat's billing records in evidence do not show conferences with
20 Walton on the days Walton claims to have missed work. Moreover,
21 substantially all of the missed days for which Walton claims
22 compensation were on Mondays or Fridays. No evidence was presented
23 that Voisenat held conferences with Walton only on Mondays and
24 Fridays; indeed, her billing records reflect the contrary.

25 The court declines to award any damages to Walton based on his
26 allegations of lost wages.

1 3. Attorneys' Fees

2 The evidence showed that Walton had to incur attorneys' fees as
3 the result of GMAC's stay relief violation. Voisenat's billing
4 records show \$15,294 in billings from August 30, 1999 to October 4,
5 2001. This amount, however, includes entries that concern conduct
6 by the VA, and defense of actions taken by the VA. The court does
7 not believe that GMAC should be held responsible for all the legal
8 costs that Walton incurred as a consequence of actions by the VA,
9 because GMAC's conduct did not proximately cause all of such
10 expenditures.²

11 This is especially true here, where it appears that the VA
12 willfully violated the automatic stay after receiving notice from
13 Voisenat of Walton's pending bankruptcy case. Moreover, there is no
14 evidence present that the VA violated the stay at the behest, with
15 the knowledge, or for the benefit of GMAC. Finally, Walton elected
16 to dismiss the VA as a party to this adversary proceeding.

17 Although the court cannot ascertain with precision the exact
18 amount of fees Walton incurred that were solely attributable to
19 misconduct by the VA, it appears from Voisenat's billing records
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21 ²Walton relies on In re Fingers, 170 B.R. 419 (S.D. Cal.
22 1994) to support his argument that the damages awardable under
23 § 362(h) need not have been proximately caused by the defendant
24 alleged to have violated the automatic stay. This court does not
25 so read Fingers, and holds that a proximate cause requirement
26 does apply. In fact, the court in Fingers explicitly noted that
"section 362(h) supports a damage award equal to the damages
proximately caused by the automatic stay's breach." Id. at 433
(emphasis added).

1 that \$12,500 should provide sufficient compensation to Walton for
2 the legal costs he incurred through trial as the proximate result of
3 GMAC's stay violation.

4 4. Punitive Damages

5 The "in appropriate circumstances" language of § 362(h) offers
6 little guidance as to when punitive damages should be imposed
7 against a party who violates the automatic stay. The Ninth Circuit
8 has stated (in a nonbankruptcy context) that the trial court has
9 considerable discretion whether to award punitive damages, and must
10 consider (1) the nature of the defendant's acts, (2) the amount of
11 the compensatory damages awarded, and (3) the wealth of the
12 defendants.³ Professional Seminar Consultants v. Sino Am. Tech.,
13 727 F.2d 1470, 1473 (9th Cir. 1984).

14 With reference to the first factor, the Ninth Circuit has
15 stated, looking to California law for guidance, that punitive
16 damages can be awarded on the basis of deliberate wrongdoing or
17 conscious disregard for the rights of others. In re Wolverton
18 Assoc., 909 F.2d 1286, 1297 (9th Cir. 1990). The California Supreme
19 Court has stated that the purpose of punitive damages is the "purely
20

21 ³There is some authority for the proposition that it is
22 reversible error for a court to award punitive damages in the
23 absence of evidence concerning the defendant's financial
24 condition. See Adams v. Murikami, 54 Cal.3d 105, 113-116 (1991).
25 Here, Walton submitted no such evidence. Because the court has
26 concluded that, in any event, this is not an appropriate case for
imposition of punitive damages, the absence of evidence as to
GMAC's financial condition, even if required for purposes of
§ 362(h), does not affect the result.

1 *public one*" of punishing wrongdoing to protect the public "from
2 future misconduct, either by the same defendant or other potential
3 wrongdoers." Adams v. Murikami, 54 Cal.3d 105, 109 (1991) (emphasis
4 in original).

5 Here, GMAC contends that it acted without knowledge of Walton's
6 pending bankruptcy case, and did not learn that the case had been
7 reinstated until November 5, 1999, when it was contacted by the VA,
8 which then held the loan. Some evidence, however, suggests to the
9 contrary. On December 10, 1998 (prior to the dismissal), GMAC filed
10 a request for notice, requesting that all further notices in this
11 case be served on GMAC care of the Law Offices of Steven J. Melmet
12 ("Melmet") in Santa Ana, California. Accordingly, the court served
13 the notice that the case had been dismissed, which GMAC admits
14 receiving, on Melmet.

15 On February 25, 1999, after the court vacated the dismissal,
16 the court served GMAC with notice that the order of dismissal had
17 been vacated, again, care of Melmet. GMAC presented no evidence
18 suggesting that Melmet did not receive the notice that the dismissal
19 had been vacated. If he did not receive it, or neglected to advise
20 GMAC that Walton's case had been reinstated, GMAC could have called
21 him as a witness to so testify, but GMAC did not do so.

22 Even so, the court does not believe that this case is an
23 appropriate one for imposition of punitive damages. The court has
24 no direct evidence that Melmet advised GMAC that Walton's chapter 13
25 case had been reinstated, or that GMAC foreclosed its deed of trust
26 with knowledge of the reinstatement. Walton introduced no evidence

1 of any communications from Voisenat to GMAC or its counsel prior to
2 November, 1999 advising GMAC that Walton's chapter 13 case had been
3 reinstated. (On August 30, 1999, Voisenat wrote to the VA, but not
4 GMAC, concerning the pendency of the case.) The court also notes
5 that there is no indication from the court's file that the court's
6 order confirming Walton's chapter 13 plan entered March 15, 1999,
7 prior to the foreclosure, was served on GMAC.

8 The court also takes into account the possibility of confusion
9 on the part of GMAC resulting from the multiplicity of bankruptcy
10 cases Walton filed, and from the filing of a third case followed by
11 a dismissal and reinstatement of that case.

12 Moreover, Mary Taylor, a representative of GMAC familiar with
13 its policies and procedures upon notification to GMAC of a
14 bankruptcy filing, testified as to the procedures GMAC has in place
15 designed to assure compliance with the automatic stay. The court is
16 not aware (nor was any evidence presented) of any pattern of
17 noncompliance with the automatic stay by GMAC. Thus, deterrence of
18 future misconduct by GMAC is not a significant consideration here.

19 All factors taken into account, including the fact that GMAC
20 will have to pay an award of attorneys' fees herein, the court
21 declines to assess punitive damages against GMAC.

22 C. CONCLUSION

23 The court will enter judgment against GMAC in the sum of
24 \$12,500.

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1 Dated: October 31, 2001

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5 Edward D. Jellen
United States Bankruptcy Judge
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